

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

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|----------------------------------|---|-------------------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Case No. 06-3114-01-CR-S-GAF |
| |) | |
| DEAN P. PROFFITT, |) | |
| |) | |
| Defendant. |) | |

ORDER

Now pending before the Court is Defendant's Motion to Dismiss the Indictment Pursuant to the Ninth and Tenth Amendments and *Cleveland v. United States*, 531 U.S. 12 (2000) (Doc. #288). Defendant argues that the indictment should be dismissed on the grounds that Congress cannot regulate the duties of local government employees.

Chief United States Magistrate Judge James C. England issued his Report and Recommendation on May 5, 2008 (Doc. #308). On May 22, 2008, Defendant filed his Objections to the Report and Recommendation (Doc. #313).

Upon careful and independent review of the pending motion, defendant's objections to the Magistrate's Report and Recommendation, as well as the applicable law, this Court hereby adopts and incorporates as its own Opinion and Order the Report and Recommendation of United States Magistrate Judge James C. England.

Accordingly, it is hereby ORDERED that Defendant's Motion to Dismiss the Indictment is OVERRULED and DENIED.

SO ORDERED.

s/ Gary A. Fenner
GARY A. FENNER, JUDGE
UNITED STATES DISTRICT COURT

DATED: May 28, 2008